

2010 UPDATES - TENNESSEE BOARD FOR LICENSING CONTRACTORS LAW, RULES & REGULATIONS AMENDMENTS / RESOURCES

This contains a summary of legislation and rules recently passed and not published in our most recent publication in the "2007 Edition - Law, Rules and Regulations". In addition, laws relative to the industry are included; however, only ones under Title 62, Chapter 6 are within the Board's statute. Other resources are also included and may review all the laws at the Board's website at: <http://tn.gov/commerce/boards/contractors/> or contact staff at 1-800-544-7693.

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2009 Legislation - Summary of Bills Passed

PUBLIC CHAPTER NO. 482 SENATE BILL NO. 1413 (Unlicensed Contractor- Recovery)

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 6, relative to general contractors. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-6-103, is amended by deleting subsection (b) in its entirety and by substituting instead the following language: (b) Any contractor required to be licensed under this chapter who is in violation of any of the provisions of this chapter or the rules and regulations promulgated by the board shall not be permitted to recover any damages in any court other than actual documented expenses that can be shown by clear and convincing proof.

SECTION 2. Tennessee Code Annotated, Section 62-6-102, is amended by adding the following language as a new, appropriately designated subdivision: () "Board" means the state board for licensing contractors created pursuant to § 62-6-104;

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it. **PASSED: June 2, 2009**

PUBLIC CHAPTER NO. 483 SENATE BILL NO. 1417 (Contracts - Lien Waiver Rights Prohibited)

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18; Title 47, Chapter 25; Title 62, Chapter 6 and Title 66, Chapter 34, relative to contractors' liens. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 66-11-124(b), is amended by designating the existing language as subdivision (1) and by adding the following language as a new subdivision as follows: (2)(A) If a contractor solicits any person to sign a contract requiring the person to waive a right of lien in violation of this section, such person shall notify the state board for licensing contractors of such fact. Upon receiving such information, the executive director of the board shall notify such contractor within a reasonable time after receiving the information that the contract is against the public policy of this state and in violation of this section. If the contractor voluntarily deletes the waiver of lien provision from such contract and affirmatively states that such language will not be included in any future contracts to perform construction work in Tennessee, no further action shall be taken by the board against the contractor unless a later complaint is filed against the contractor.(B) If the contractor does not delete the waiver of lien provision, then the executive director shall schedule a hearing for appropriate action by the board. If the board finds, after a hearing, that the contracts of the contractor are in violation of this section, such contractor's license shall be immediately revoked. (C) Notice of such revocation shall be sent by the board to the contractor's licensing authority in all states in which such contractor is licensed as a contractor. (D) In any action for damages based on the waiver of a right of lien filed by a person solicited by the contractor, such person shall have the right to recover from the contractor reasonable attorney's fees and cost in connection with the enforcement of such lien.

SECTION 2. This act shall take effect **July 1, 2009**, the public welfare requiring it.

***PUBLIC CHAPTER NO. 529 SENATE BILL NO. 2300 (TN Clean Energy Future Act of 2009 / Statewide Code) *(Not part of Title 62, Chapter 6)**

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, and 22; Title 12, Chapter 3; Title 67, Chapter 6; Title 68, Chapter 120 and Title 71, Chapter 5, relative to energy efficiency and conservation

SECTION 1. This act shall be known and may be cited as the "Tennessee Clean Energy Future Act of 2009".
(See all 31 sections at www.michie.com)

Division of Fire Prevention

<http://tn.gov/commerce/sfm/homebuilding/index.shtml> - In order to improve the safety and energy efficiency of homes, the state has adopted and will be enforcing the 2009 International Residential Code (IRC) and the 2006 International Energy Conservation Code (IECC). Fire sprinklers will not be required in one and two family houses. These building codes apply to: new residential construction (not renovations) or change of use to residential beginning on or after October 1, 2010.

***PUBLIC CHAPTER NO. 530**
SENATE BILL NO. 2318
(Contractor Tax Credit - Section 77 of 133)
***(Not part of Title 62, Chapter 6)**

SECTION 77. Tennessee Code Annotated, Section 67-4-711(a), is amended by deleting subdivision (5) in its entirety and by substituting instead the following: (5)(A) Amounts actually paid during the business tax period by a contractor to a subcontractor holding a business license or who is licensed by the state board for licensing contractors for performing the activities described in § 67-4-708(4)(A). For a contractor to be eligible to claim the deduction, such contractor must provide, on a form prescribed by the commissioner, the name, address, and business license or contractor's license number of the subcontractor and the amount subcontracted. The contractor also must maintain in its records a copy of the subcontractor's business license or license issued by the board for licensing contractors.

2008 Legislation Summary – Bills Passed

PUBLIC CHAPTER NO. 792
SENATE BILL NO. 1288
(Geothermal HVAC Projects)

Section 62-6-119(b), is amended in the first sentence by inserting the language "and for each vertical closed loop geothermal heating and cooling project, the company name, Tennessee Department of Environment and Conservation license number, classification (G, L or G,L) and the expiration date," between the language "air conditioning contracts," and the language "appear on the outside of the envelope". (See also HB

SECTION 2. Tennessee Code Annotated, Section 62-6-119(b), is amended in the fourth sentence by inserting the language "or the geothermal heating and cooling" between the language "air conditioning" and the language "must be so designated".

This act shall take effect **July 1, 2008**

PUBLIC CHAPTER NO. 904
SENATE BILL NO. 3902
(Non-Reciprocal States)

Section 62-6-111(a)(1), is amended by designating the current language as subdivision "(A)" and by adding the following new language, to be designated as subdivision "(B)": (B) Anyone desiring to be licensed as a contractor for this state, who resides in a state that does not practice reciprocity with licensees of the Tennessee board for licensing contractors, shall make written application on such forms as shall be prescribed by the board and shall attach an affidavit thereto stating that the applicant is not currently performing any construction work and has not offered to engage in any construction work in this state wherein the amount of the applicant's contract exceeds twenty-five hundred dollars (\$2,500) or, in the case of a limited licensed electrician, wherein the amount of such applicant's contract exceeds twenty-five thousand dollars (\$25,000). The application shall be accompanied by an application fee as set by the board. The application shall also be accompanied by evidence of the applicant's current workers' compensation insurance coverage. Failure to provide such evidence of insurance coverage shall make the applicant ineligible for licensure by the board until such evidence of insurance coverage is provided. Any application for initial licensure or for renewal of licensure also shall be accompanied by an affidavit affirming that the applicant maintains general liability insurance and workers' compensation insurance and specifying the amount of the insurance as well as any other information the board may require.

This act shall take effect July 1, 2008.

***PUBLIC CHAPTER NO. 804**
HOUSE BILL NO. 3105
(Retainage)
***(Not part of Title 62, Chapter 6)**

Section 66-11-144(g), is amended by deleting the subsection in its entirety and by substituting instead the following: (g) This section shall be applicable to all prime contracts and all subcontracts thereunder for the improvement of real property when the contract amount of such prime contract is five hundred thousand dollars (\$500,000) or greater, notwithstanding the amount of such subcontracts.

SECTION 2. The Tennessee Code Commission is directed to move Tennessee Code Annotated, Section 66-11-144 in its entirety to Title 66, Chapter 34, Part 1 to be renumbered as § 66-34-104.

SECTION 3. Tennessee Code Annotated, Section 66-34-103, is amended by adding the following as new subsections (d) and (e): (d) In the event that an owner or prime contractor withholds retainage which is for the use and benefit of the prime contractor or its subcontractors pursuant to subsections (a) and (b) of § 66-34-104, neither the prime contractor nor any of its subcontractors shall be required to deposit additional retained funds into an escrow account in accordance with § 66-34-104(a) and (b). (e)(1) It is an offense for a person, firm or corporation to fail to comply with the provisions of § 66-34-104(a) or subsection (a) or (b) of this section. (2) (A) A violation of this subsection is a Class A misdemeanor, subject to a fine only of \$3,000.00.

PUBLIC CHAPTER NO. 861
SENATE BILL NO. 3968
(Public Member Appointment)

Section 62-6-104(a)(1), is amended by deleting the following language in the second sentence of the subdivision: and at least one (1) of whom shall be a person who is not engaged as a contractor in any county of this state and by substituting instead the language: and at least one (1) of whom shall be a person who is not engaged as a contractor in any county of this state and has no significant financial interest in residential contracting. For purposes of this section, "significant financial interest" means ten percent (10%) of gross personal income for a calendar year except that it means fifty percent (50%) of gross personal income for a calendar year if the recipient is over sixty (60) years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement. SECTION 2. It is the intent of the general assembly that the current member of the state board for licensing contractors who is not engaged as a contractor shall continue to serve on the board until the expiration of the member's current term of service. SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 21, 2008
SENATE BILL 4039
(Energy Efficient Schools Initiative)
***(Not part of Title 62, Chapter 6)**

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 49, relative to creating the Energy Efficient Schools Initiative. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE: SECTION 1 – 8. This chapter shall be known and may be cited as the "Energy Efficient Schools Initiative (EESI) of 2008."

HOUSE BILL 2949
(Notify Licensees – January 1, 2009)

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3; Title 4, Chapter 5; Title 37, Chapter 5, Part 1; Title 43; Title 44; Title 45, Chapter 1, Part 1; Title 62; Title 63; Title 68 and Title 71, Chapter 1, Part 1, relative to licenses, certifications, and registrations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-76-101, is amended by designating the existing language as subsection (a) and by adding the following language as a new subsection (b): (b) Each board, commission, agency or other governmental entity created pursuant to this title shall:

(1) Notify each holder of a license, certification or registration from such board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, policies, and guidelines that regulate such holder and are implemented or enforced by such entity and shall, upon request, make available to the holder a copy of such statutes, rules, policies, and guidelines.....

***PC 1041 / HOUSE BILL NO. 1645**
(Workers Compensation – December 31, 2009) (Repealed 2010 – See Public Chapter 1)
***(Not part of Title 62, Chapter 6)**

T.C.A. 50-6-113 (Chapter 1041 of the Public Acts of 2008) clarifies that unless you are a sole proprietor or partner (with no employees) getting paid directly by the property owner, an employer in the contracting group designated by the National Council of Compensation Insurance (NCCI) must have workers' compensation insurance on all of their workers and themselves. This Act becomes effective December 31, 2009. More information is available with the Department of Labor and Workforce Development at: <http://www.state.tn.us/labor-wfd/wcomp.html>

Sole proprietors and partnerships, regardless if they have no employees, must have workers compensation insurance on themselves to work directly for the owner. Therefore, proof must be provided for all licensees as part of the requirements to obtain a contractor's and home improvement license under T.C.A. § 62-6-111; 116; and 506.

2009 RULES & REGULATIONS - AMENDMENTS

Rules of the Tennessee Board for Licensing Contractors

0680-01-.25 CONTRACTING IN CORRECT NAME.

Upon receiving certificate of licensure from this Board, the licensee has an affirmative responsibility to enter into contracts and operate its related contracting business under the name in which it is licensed in order to notify and prevent confusion on the part of the public at large of an entity's licensure status. Contracting in a name different than that in which an entity is licensed by this Board is considered a violation of this chapter, and will be subject to discipline accordingly.

Authority: T.C.A. §§62-6-108(a) and 62-6-115. **Administrative History:** Original rule filed March 19, 2009; effective June 2, 2009.

2008 RULES & REGULATIONS - AMENDMENTS

0680-07-.01 to 0680-07-.14 HOME IMPROVEMENT LICENSING

Revised former rules of 0765-2 from T.C.A. Title 62, Chapter 37 which were merged with T.C.A. Title 62, Chapter 6. Includes revisions for fees, license issuance for two years, contract written requirements, payment schedule and advertisement guidelines. (See separate attachment)

0680-01-.10 RENEWAL OF LICENSES.

Any person, firm or corporation desiring to renew a license shall make application to the Board on the prescribed forms. A renewal application for a monetary limitation greater than one million five hundred thousand dollars (\$1,500,000) must be accompanied by a reviewed or audited financial statement prepared by a licensed accountant. If a renewal applicant requests a monetary limitation of one million five hundred thousand dollars (\$1,500,000) or less, he or she may submit a notarized statement that the information contained in his or her financial statement is true and correct.

0680-01-.14 REQUEST FOR CHANGE OF CLASSIFICATION OR LIMITATION.

(1) Request for Change of Classification or Limitation. A licensee may request the Board to consider revision of his classification(s) and/or monetary limitation(s) at any of its regular meetings. Such request shall be made by letter, which shall be accompanied by financial, equipment, and experience statements relative to the classification request accurate as of no more than twelve (12) months prior to the date of the request. The request must be received in the Office of the Board by the last day of the month preceding the month in which it is to be considered.

(2) A request for a change in monetary limitation to be less than one million five hundred thousand dollars (\$1,500,000) shall be reviewed or audited by a licensed accountant or certified public accountant. A request for a change in monetary limitation to more than one million five hundred thousand dollars (\$1,500,000) shall be audited and attested to by a licensed public accountant or certified public accountant.

(3) The Board reserves the right to require examination pursuant to request for change of classifications. The Board further reserves the right to consider a request for change of classification or limitation at any time if consideration of the request at the regularly scheduled meeting would cause an undue hardship on the owner and be in the best interest of the public safety and welfare.

(4) Increases within the first year will not be allowed without special permission from the Board.

To review the complete Rules and Regulations, go to the publications site of the Secretary of State at: <http://www.state.tn.us/sos/rules/0680/0680.htm>

MISCELLANEOUS - OTHER STATUTES RELATIVE TO CONSTRUCTION

These relate to the construction industry but are not within the Board's statute under Title 62, Chapter 6.

LAWS <http://www.michie.com/tennessee/>

- Contractors (T.C.A. Title 62, Chapter 6)
- Alarm Systems (T.C.A. Title 62, Chapter 32)
- Electrical (T.C.A. Title 68, Chapter 102)
- Fire Sprinkler (Title 62, Chapter 32)
- Workers Compensation (Title 50, Chapter 32)

RULES <http://www.state.tn.us/sos/rules/>

- Contractors – Division of Regulatory Boards (TDCI 0680)
- Electrical - Division of Fire Prevention (TDCI 0780-02-01)
- Fire Sprinkler- Division of Fire Prevention (TDCI 0780-02-07)
- Workers Compensation (TDLWD – 0800-01)
- Alarm Systems Board Contractor Exemptions (TDCI - 0090-01-03)
- Environment & Conservation - Burning Permits; Asbestos Accreditation; Lead; etc. (TDEC 1200)

SECRETARY OF STATE – PUBLICATIONS <http://www.state.tn.us/sos/rules/>

- Rulemaking Hearings Notices
- Pending Rules
- All Rules for State

Abbreviations Index:

TDCI:	<i>Tennessee Department of Commerce and Insurance</i>
TDEC:	<i>Tennessee Department of Environment and Conservation</i>
TDLWD:	<i>Tennessee Department of Labor Development and Workforce</i>
SOS:	<i>Tennessee Secretary of State</i>

RECIPROCATON

Tennessee, as well as most states, does not have reciprocaton where a contractor licensed from another state is allowed to use their state's license to perform work in our state without a Tennessee contractor's license. The only type of reciprocaton offered is with the trade exam; only a part of the licensing process. Several state agencies have agreed to waive the trade exam for certain classifications, such as: Alabama, Arkansas, Louisiana, Mississippi, North Carolina and South Carolina. In addition, the Board voted to accept the NASCLA National Commercial Exam.

CONTRACTOR CLASSIFICATIONS OUTLINE

Check the Board's website for a listing of frequently used contractor license classifications and bidding information at: <http://tn.gov/commerce/boards/contractors/>

RESOURCES

Note: This is a summary of legislation not published in the "2007 Edition of the Board for Licensing Contractor's Law, Rules and Regulations". More information is available with the Tennessee General Assembly at: <http://www.legislature.state.tn.us/>.

To review the contents of all chaptered laws, you may do so with LexisNexis Law publishing at: <http://www.michie.com/tennessee/>

Rules and Regulations of all effective rules, pending or scheduled rulemakings, are at the Secretary of State's website at: <http://www.state.tn.us/sos/rules/>

2010 Legislation - Summary of Bills Passed

PUBLIC CHAPTER NO. 1 and 1149 – Workers’ Compensation Amendment

Amended prior law with new exemption requirements – See <http://tnbear.tn.gov/wc/>

PUBLIC CHAPTER NO. 482 (Unlicensed Contractor- Recovery)

Contractor required to be licensed under this chapter, limited to recovery of expenses.

PUBLIC CHAPTER NO. 483 (Contracts - Lien Waiver Rights Prohibited)

Contractor solicits any person to sign a contract requiring the person to waive a right of lien is in violation.

PUBLIC CHAPTER NO. 529 (TN Clean Energy Future Act of 2009 / Statewide Code)

State fire marshal shall enforce the statewide codes with regard to those buildings for which the local jurisdiction has not adopted... See <http://tn.gov/commerce/sfm/homebuilding/index.shtml>

PUBLIC CHAPTER NO. 749 – Prohibited Liens from Unlicensed Home Improvement Contractors

Clarifies that unlicensed home improvement contractors, just as other contractors, are also prohibited from filing liens.

PUBLIC CHAPTER NO. 768 – Masonry Bid Envelope Requirements

Requires masonry contractors to be listed on the outside of the bid envelope, for masonry portions (including materials and labor) over \$100,000.

<http://tn.gov/commerce/boards/contractors/documents/MasonryLawNoticeWeb.pdf>

PUBLIC CHAPTER NO. 801 – Electronic Bidding

Prohibits from requiring subcontractors license information to be provided prior to bid deadline.

PUBLIC CHAPTER NO. 950 – Masonry Subcontractors and Exam

Requires masonry subcontractors to be licensed by taking a “LMC” (Licensed Masonry Contractor) trade exam by January 1, 2011 in order to bid or perform work in excess of \$100,000 (including materials and labor). Trade exam to be available after 9/1/2010.

PUBLIC CHAPTER NO. 1055 – Criminal Violation/Punishment as Theft

A contractor who takes money without performing work is considered a felony.

Summary of 2010 Masonry and Bidding Laws

Law changes from the 2010 legislative session have revised license and bid requirements. For projects \$25,000 or more, T.C.A. §62-6-119 requires the **Prime** (general) contractor to list their contractor license information on the outside of the bid envelope (*or electronic bid*), with the **Name, License Number, Expiration Date** and the **Classification** applying to the bid. In addition to the prime listing, the contractor license information must also be included for the **Electrical, Plumbing, and HVAC** contractors, unless the project is less than \$25,000. Effective July 1, 2010, the amendment to Public Chapter 768 now requires the **Masonry** contractor to also be listed, unless the masonry portion is less than \$100,000 (*including materials and labor*). While it may not be required by the Board’s current law, many awarding authorities may also require more information to be listed, such as the monetary limit; as well as the geothermal TDEC well-driller information. Therefore, it is very important to follow the bidding instructions and to supply the prime contractor with a copy of your license.

**Projects \$25,000 and more require the license information to be listed; masonry is required to be listed if \$100,000 or more (including materials and labor).*

2011 Bill Amendments (Pending Legislation)

See the website of the Tennessee General Assembly for updates of all pending bills listed on page one (1) at: <http://www.legislature.state.tn.us/>

Note: This is a summary from the Board for Licensing Contractors. You may review complete contents of the laws passed with the Tennessee General Assembly at: <http://www.legislature.state.tn.us/> or the Rules at: <http://www.state.tn.us/sos/rules/>